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July 2, 2008

VIA FEDERAL EXPRESS
OVERNIGHT DELIVERY

Clerk of the Court
Thirteenth Judicial District Court
Valencia County Courthouse
444 Luna Avenue
Los Lunas, New Mexico 87031

***Re: Major, et al v. Gary K. King, Attorney General of New Mexico, Ron Curry,
Secretary of the New Mexico Environment Department, Highland Meadows Estates
Mutual Domestic Water Consumers Association, Cause No.: D-1314-CV-2008-072.***

Dear Court Clerk:

Please find enclosed for filing in the above mentioned cause Plaintiffs' Second Amended Complaint for Declaratory Judgment. Postage pre-paid stamped envelopes are included for all counsel of record.

Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in cursive script that reads "Darcie B. Weingrad".

Darcie B. Weingrad

DBW
Enclosures

cc: All counsel of record

**THIRTEENTH JUDICIAL DISTRICT COURT
STATE OF NEW MEXICO
COUNTY OF VALENCIA**

**MALCOLM ("BUDDY") S. MAJOR, JR.,
Individually, and MALCOLM ("BUDDY")
S. MAJOR, JR. d/b/a MAJOR LAND AND
CATTLE CO. and THREE BAR LAND
COMPANY., LLC,**

Plaintiffs,

v.

D-1314-CV-2008-072

**GARY K. KING, Attorney General of New Mexico,
and RON CURRY, Secretary of the New Mexico Environment
Department, and HIGHLAND MEADOWS ESTATES
COOPERATIVE ASSOCIATION d/b/a HIGHLAND MEADOWS
MUTUAL DOMESTIC WATER CONSUMERS AND SEWAGE
WORKS ASSOCIATION,**

Defendants,

**HIGHLAND MEADOWS MUTUAL DOMESTIC WATER
CONSUMERS AND SEWAGE WORKS ASSOCIATION,**

Counter-Claimant,

v.

**MALCOLM ("BUDDY") S. MAJOR, JR.,
Individually, and MALCOLM ("BUDDY")
S. MAJOR, JR. d/b/a MAJOR LAND AND
CATTLE CO. and THREE BAR LAND
COMPANY, LLC,**

Counter-Defendants.

**STATE OF NEW MEXICO, ex rel.
GARY K. KING, ATTORNEY GENERAL;
RON CURRY, in his official capacity as Secretary
Of the New Mexico Environment Department,**

Counter-Claimants,

v.

**MALCOLM (“BUDDY”) S. MAJOR, JR.,
Individually, and MALCOLM (“BUDDY”)
S. MAJOR, JR. d/b/a MAJOR LAND AND
CATTLE CO. and THREE BAR LAND
COMPANY, LLC, and
ANABEL TREVINO, f/k/a, ANABEL PETERS,**

Counter-Defendants.

SECOND AMENDED COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiffs, Malcolm S. Major, Jr., individually, Malcolm S. Major, Jr. d/b/a Major Land and Cattle Co., and Three Bar Land Company, LLC, for their Complaint against Defendants, Gary K. King, Attorney General of New Mexico, Ron Curry, Secretary of the New Mexico Environment Department, and Highland Meadows Estates Cooperative Association d/b/a Highland Meadows Mutual Domestic Water Consumers and Sewage Works Association, allege as follows:

I. THE PARTIES

1. Plaintiff, Malcolm (“Buddy”) S. Major, Jr., is an individual and sometimes does business as Major Land & Cattle Co., who resides in Valencia County, New Mexico. Plaintiff, Three Bar Land Company, LLC, is a limited liability company organized under the laws of New Mexico, doing business in Valencia County, New Mexico. This First Amended Complaint refers to Plaintiffs, collectively, as “Major.”

2. Plaintiffs are principally engaged in the cattle ranching business in New Mexico.

3. Defendant, Gary King, is the Attorney General of the State of New Mexico (AG King) who is the official charged by New Mexico state statutes with evaluating claims, defending actions brought against the state or its officers, NMSA 1978, § 8-5-1 et seq., and

bringing legal actions under such statutes as the Unfair Practices Act, NMSA 1978, § 57-12-1 et seq., and the False Advertising Act, NMSA 1978, § 57-15-1 et seq., both of which are at issue in this lawsuit.

4. Defendant, Ron Curry, is the Secretary of the New Mexico Environment Department (Secretary Curry) who is the official charged by New Mexico state statutes with bringing legal actions under the Federal Safe Drinking Water Act (SDWA), 42 U.S.C. § 300f to 300j-26 (2003), Environmental Improvement Act, NMSA 1978, § 74-1-1 et seq., and state Drinking Water Regulations, 20 NMAC 7.10 et seq., as effective January 1, 1995 and amended December 15, 1999, all of which are issue in this lawsuit.

5. Defendant, Highland Meadows Mutual Domestic Water Consumers and Sewage Works Association (the Association), successor to Highland Meadows Estates Cooperative Association (Cooperative) is a mutual domestic water consumers association, organized pursuant to the Sanitary Projects Act, NMSA 1978, § 3-29-1 et seq., and the owner of certain shared-well Facilities at issue in this lawsuit.

II. JURISDICTION

6. The Court has jurisdiction over this action pursuant to NMSA 1978, § 44-6-13 (1975) which provides that an official of the State of New Mexico may be sued and declaratory judgment entered when the rights, status or other legal relations of the parties call for a construction of the constitution of the State of New Mexico or any of the laws of the State of New Mexico, or any statute thereof.

III. VENUE

7. Venue in Valencia County, New Mexico is proper under NMSA 1978 § 38-3-1 (A) and (G).

IV. SUMMARY OF COMPLAINT

8. Plaintiffs bring this action for prospective declaratory and injunctive relief to declare rights and interests between Major and the Association with respect to their Contracts and to remedy AG King's and Secretary Curry's repeated, ongoing, and unlawful violation of rights afforded Major by the United States and New Mexico Constitutions. Major does not seek monetary damages.

V. BACKGROUND OF THE CONTROVERSY

A. Early History of Highland Meadows Estates and Related Water Facilities

9. Sometime in the late 1960s, unknown persons developed and offered for sale lots and parcels of land in an area known as Highland Meadows Estates (HME), located south of Interstate 40, south of Highway 6, near mile markers 2 and 3, in Valencia County, New Mexico.

10. On April 13, 1971, the Cooperative incorporated as a §501(c)(3) organization and, upon Plaintiffs' information and belief, operated in some fashion with respect to water, shared-well facilities and water matters in general for lot and parcel owners within HME.

11. Major purchased a lot in HME and has resided there since 1977.

12. At various times after 1977, Major purchased additional lots and parcels in HME. He thereafter undertook to secure domestic use-water rights and to implement a shared-well system. Major secured exploratory well permit nos. RG-67781, RG-RG-62813, RG-64055, RG-69297, and RG-67783, and a declared groundwater permit no. RG-28740, as well as shared-well infrastructure, including a storage tank, chlorinator, and pipelines located in HME (collectively hereinafter "Shared-well Facilities").

13. Major sporadically engaged in sale of lots and parcels at HME and advertised such sales in newspapers, brochures, and on a sign located on Major's property within HME

with the statement “with water” or “with shared-well.” Such advertisements were usual and customary in the area of HME for sales of lots and parcels.

14. Lot owners and purchasers of lots or parcels from Major who entered into certain shared-well agreements which contemplated use of one or more of the above well(s) agreed to take groundwater in “as is, condition, without any representation or warranty of any nature or kind express or implied from Plaintiffs or anyone else as to its purity, mineralization, portability or suitability for domestic use, human consumption, and for other purposes.”

15. On or about December 5, 2000, Major prepared and issued a property report which was subsequently disclosed to purchasers of Major’s lots. The report contained the following disclosure: “On previously drilled wells the water is hard and is usually not used for drinking.”

B. Evolution of the Association and its Acquisition of the Water Facilities at HME

16. On or about May 31, 2001, the Cooperative elected to reorganize as a “mutual domestic” for the purpose of obtaining state and federal funds for use in the maintenance and operation of the community water system and treatment of appropriated water. On July 13, 2001, the New Mexico Public Regulation Commission issued Restated Certificate of Incorporation No. 3225539, acknowledging the reincorporation of the Cooperative as the Highland Meadows Domestic Water Consumers and Sewage Works Association (the Association), a mutual domestic corporation. The stated purpose of the Association was to “acquire, construct, install, maintain and operate a water and/or sewer system for the supplying and distribution of water for domestic uses and/or for the collection of sewage for its members.”

17. By Agreement dated May 31, 2001, and at the request of members of the HME community, Major agreed to convey the Shared-well Facilities to the Cooperative. The

Agreement was entered into in good faith and with the understanding that the community would effectively manage, repair and maintain the Shared-well Facilities for the benefit of the community.

(i) Under the Agreement, Major expressly indicated that he made “no representations or warranties regarding the amount of water, the sufficiency of water, the quality of water or the validity of the water rights under applicable law with regard to any water rights subject to this Agreement.” *See* Exhibit A, Agreement, Section II.

(ii) Under the Agreement, the Cooperative agreed to indemnify, hold harmless and release plaintiffs Major or Major Land & Cattle Co. as follows:

The Cooperative or its successor organization agrees *to indemnify and hold harmless and release Major or Major Land & Cattle Co.* from any and all *claims arising from [1] the transfer of the water rights and infrastructure, [2] the grant of access easements pursuant to this Agreement, and [3] the provision of water service.* Such indemnity and release shall include, but not be limited to claims by the cooperative or its successor organization or any members or eligible members of the Cooperative or successor organization regarding water service, and any liability arising from the formation of the Highland Meadows Water Cooperative or its successor organization, the Highland Meadows Mutual Domestic Water Consumers Association. *Such indemnity and release shall apply to all claims whether arising prior to or after the execution of this Agreement.*

(iii) Under the Agreement, the Cooperative agreed to be responsible for any necessary filings with the Office of the New Mexico State Engineer or other entity that would be required to transfer the water rights to the Cooperative or to bring the water rights into good standing. *See* Exhibit A, Agreement, Section IV.

(iv) Under the Agreement, Major affirms that he “makes no representations, warranties, or covenants not included in the Agreement and the Cooperative or its successor

organization agreed not to rely on any representations, warranties or covenants not included in the Agreement. *See* Exhibit A, Agreement, Section VII.

Pursuant to the Agreement, Major transferred all of his right, title and interest in the Shared-well Facilities to the Cooperative d/b/a the Association by Quitclaim Deed and Bill of Sale, dated August 27, 2001. The Agreement, Quitclaim Deed and Bill of Sale are collectively referred to as the “Contracts,” and are attached hereto as Exhibit A. Since the Contracts, Major has had no ownership interest in or responsibility for the Shared-well Facilities at HME.

17(a). On April 7, 2008, Defendant Association filed counterclaims for declaratory and injunctive relief. Defendant Association’s counterclaims arise from the *transfer of water rights and infrastructure* under the Contracts and the *provision of water service*. In its counterclaims, Defendant Association seeks a declaration that Major failed to comply with laws applicable to public water supply systems and breached a fiduciary duty, duty to act in good faith and duty to disclose. Defendant Association requests as a remedy all costs and expenses necessary to upgrade water infrastructure to public water supply system standards. *See* Defendant Association’s Answer and Counterclaim to Plaintiffs’ First Amended Complaint, ¶ 56 (a)-(e).

18. At the time of the Contracts, the Shared-well Facilities served less than fifteen connections at HME.

C. **The Statutes at Issue -- Complaints and Threats by AG King and Secretary Curry**

19. The New Mexico Unfair Practices Act prohibits unfair or deceptive trade practices in the sale of unimproved real property. 1978 NMSA, §57-12-3. An “unfair or deceptive trade practice” in the sale of unimproved real property is a “false or misleading oral or written statement, visual description or other representation of any kind knowingly made.” *Id.* §57-12-2(D) (emphasis supplied).

20. The False Advertising Act prohibits false advertising in the conduct of any business, trade or commerce. *Id.* § 57-15-1. “False advertising” means “advertising, including labeling, which is misleading in any material respect. *Id.* In determining what is “misleading,” one must consider not only the representation actually made, but also the extent to which the advertising fails to reveal material facts with respect to the commodity advertised “*under such conditions as are customary or usual.*” *Id.* (emphasis supplied). It was and is customary or usual to advertise real property in the area of HME for sale with “water,” with “utilities,” or with well access.

21. The Safe Drinking Water Act (SDWA) is the main federal law that sets standards for drinking water quality and oversees states, localities, and water suppliers who implement those standards. The New Mexico Environment Department Drinking Water Bureau oversees compliance with and enforcement of the SDWA and state Drinking Water Regulations. The federal SDWA defines a “public water system” as “a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system *has at least fifteen service connections or regularly serves at least twenty-five individuals.*” 42 U.S.C. §300f(4)(A). State Drinking Water Regulations define a “public water system” as “a system for the provision to the public of piped water for human consumption if such system *has at least 15 service connections or regularly services an average of at least 25 individuals at least 60 days a year.*” NMAC §20.7.1.103(BA). It is undisputed that at the time of the Contracts between Major and the Association, the Water Facilities at HME served less than fifteen connections, regularly served less than twenty-five (25) individuals, and regularly served less than an average of twenty-five (25) individuals at least sixty (60) days a year. The shared-well facilities conveyed by Plaintiffs in 2001 therefore did not constitute a “public water system” as

that term is defined under the SDWA and Drinking Water Regulations. Accordingly, Plaintiffs' water system at the time of conveyance and all times prior thereto was not subject to the provisions of the SDWA or Drinking Water Regulations.

22. In 2006, Secretary Curry ordered the Association to suspend additional connections to its water system until certain components of the "physical" system could be brought into what he asserts is compliance with requirements of the Federal Safe Drinking Water Act ("SDWA"), 42 U.S.C. § 300f to 300j-26 (2003), and state Drinking Water Regulations, NMAC 20.7.10 et seq. (LexisNexis 2007), as effective January 1, 1995 and amended December 15, 1999.

23. On November 16, 2006, Assistant General Counsel for the New Mexico Environment Department on behalf of the Drinking Water Bureau issued a complaint to the Consumer Protection Division of the New Mexico Attorney General's Office, alleging that the Shared-well Facilities Major conveyed to the Association in 2001 violated provisions of the SDWA and state Drinking Water Regulations. The letter also alleged that Major violated the Unfair Practices Act, NMSA 1978, § 57-12-1 et seq., and the False Advertising Act, NMSA 1978, § 57-15-1 et seq., by not disclosing to lot purchasers the fact that groundwater in the area was not normally used for drinking without some form of additional treatment.

24. By letter dated November 16, 2006, Assistant Attorney General for the New Mexico Attorney General's Office Consumer Protection Division notified Major of the NMED's complaint and its pending investigation into alleged violations of the False Advertising Act and the Unfair Practices Act.

24(a). On March 25, 2008, Defendants AG King and Secretary Curry filed counterclaims against Major. Defendants counterclaims arise from the *provision of water*

service within Highland Meadows Estates both before and after the transfer of infrastructure and water rights under the Contracts. *See* Defendants' Counterclaims, Counts I, II, III, IV, V, VI, VII, VIII, XIII, and XV.

25. Prior to the initiation of investigations by the AG King and Secretary Curry, no purchaser to whom Major sold a lot or parcel in HME ever complained to Major about the Shared-well Facilities or the quality or availability of water at HME.

VI. THIS CONTROVERSY IS RIPE FOR ADJUDICATION

26. An actual case and controversy exists between Major, the Association, AG King and Secretary Curry concerning the meaning and effect of the Contracts, the locus of responsibility for operation of the Water Facilities at HME resulting therefrom, and the non-discretionary duties of AG King and Secretary Curry with respect to the enforcement of the referenced state statutes.

27. Since the issuance of the NMED's complaint on November 16, 2006, Buddy Major has met with representatives of the Attorney General's Office and the New Mexico Environment Department on numerous occasions in a good faith attempt to discuss and resolve the issues presented by their allegations. The parties have been unable to resolve or settle the allegations.

28. This controversy is ripe for adjudication by this Court.

VII. CLAIMS FOR DECLARATORY AND INJUNCTIVE RELIEF

COUNT I

29. Major adopts and incorporates herein by reference all allegations contained in Paragraphs 1-28, *supra*, as if fully repeated herein.

30. An actual and justiciable dispute exists between Major and the Association concerning the meaning of the Contracts, the representations and warranties contained in such Contracts, and the responsibility resulting therefrom for assuring that the Water Facilities at HME comply with all applicable statutes and regulations.

WHEREFORE, Major prays for declaration of the rights and obligations of Major and the Association regarding the Contracts.

COUNT II

31. Major adopts and incorporates herein by reference all allegations contained in Paragraphs 1-30, *supra*, as if fully repeated herein.

32. AG King and Secretary Curry have constitutional, non-discretionary and ministerial duties to enforce state statutes and regulations fairly, to avoid selective prosecution of its citizens and to act without interference with citizens' freedom to contract for the acquiring holding, and selling of property.

33. AG King and Secretary Curry, through numerous actions and inactions, have breached their constitutional, non-discretionary and ministerial duties by means including, but not limited, to: (i) repeated threats to Major of expensive and extended litigation, excessive fines and damages, in a manner that constitutes selective prosecution and enforcement of state statutes and regulations; (ii) issuing orders and demands that constitute interference with the terms and conditions and provisions of contracts between Major and the Association as well as contracts between Major and the purchasers from him of lots and parcels within HME; (iii) asserting damage claims on behalf of purchasers of lots from Major in circumstances where such purchasers have not themselves made complaints or demand on Major, and where some such purchasers have disclaimed the existence of misrepresentation by Major and any injury or

damages; (iv) making claims and threatening lawsuits, fines and damages for statutory and regulatory violations in circumstances where the statutes and regulations indisputably did not apply, e.g., Major's 2001 transfer of Shared-well Facilities to the Association did not constitute transfer of a "public water supply system."

34. Such actions and inactions by AG King and Secretary Curry are without legal justification or excuse.

WHEREFORE, Plaintiffs pray for an Order declaring that AG King and Secretary Curry are in breach of their constitutional, non-discretionary and ministerial duties with respect to their actions and inactions toward Major, and enjoining AG King and Secretary Curry from such actions in the future.

COUNT III

35. Major adopts and incorporates herein by reference all allegations contained in Paragraphs 1-34, *supra*, as if fully repeated herein.

36. The Agreement imposes a duty on Defendant Association to indemnify and hold harmless Major or Major Land & Cattle Co. from any and all penalties and other forms of relief awarded under Counts I, II, III, IV, V, VI, VII, VIII, XIII, and XV of Defendant Secretary Curry's and A.G. King's counterclaims because these claims arise from the provision of water service within Highland Meadows Estates.

WHEREFORE, Major prays for a declaration that Defendant Association is contractually obligated to indemnify Major or Major Land and Cattle Co. from any and all penalties and other forms of relief awarded, if any, under Counts I, II, III, IV, V, VI, VII, VIII, XIII, and XV of Defendants A.G. King's and Secretary Curry's counterclaims.

COUNT IV

37. Major adopts and incorporates herein by reference all allegations contained in Paragraphs 1-36, *supra*, as if fully repeated herein.

38. In seeking declaratory and injunctive relief under counterclaims arising from the transfer of water rights and infrastructure under the Contracts and the provision of water service, Defendant Association is in breach of its contractual obligation to indemnify, hold harmless and release Major or Major Land & Cattle Co. from all such claims.

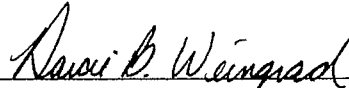
WHEREFORE, Major prays for a declaration that Defendant Association is in breach of its obligation to indemnify, hold harmless and release Major or Major Land & Cattle Co. from any and all claims arising from the transfer of the water rights and infrastructure and the provision of water service.

VIII. JURY DEMAND

39. Plaintiffs hereby separately demand a jury of twelve (12) for all issues so triable.

Respectfully submitted,

HOLLAND & HART, LLP



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**MALCOLM ("BUDDY") S. MAJOR, JR.,
INDIVIDUALLY, AND
MALCOLM ("BUDDY") S. MAJOR, JR.
d/b/a MAJOR LAND AND CATTLE CO., and
THREE BAR LAND COMPANY, LLC**

CERTIFICATE OF SERVICE

I certify that on July 2, 2008 I served a copy of the foregoing document to the following
counsel of record via U.S. Mail, postage prepaid to:

Sharon T. Shaheen
Montgomery & Andrews
Post Office Box 2307
Santa Fe, New Mexico 87504

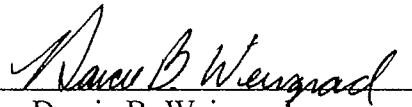
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